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SENATE BILL 710

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO NEW MEXICO COMMUNITIES; ENACTING THE NEW MEXICO
HEALTHY COMMUNITIES ACT; REQUIRING NOTICE AND COMMUNITY IMPACT
REPORTS PRIOR TO CERTAIN ACTIONS BY CERTAIN REGULATORY
AGENCIES; PROVIDING CRITERIA FOR MAKING CERTAIN DECISIONS BY
CERTAIN REGULATORY AGENCIES; PROVIDING FOR CITIZEN ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"New Mexico Healthy Communities Act".

Section 2. FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) facilities that affect New Mexico
communities' air, water and other resources and that are
regulated by the energy, minerals and natural resources
department, the department of environment or local governments

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1 pursuant to their zoning authority tend to be concentrated in
2 communities that consist predominantly of members of certain
3 ethnic, income-level and racial populations;

4 (2) members of communities in which the
5 regulated facilities are located and concentrated, and
6 communities that are affected significantly by the regulated
7 facilities, do not have the means to prevent the disparate
8 public health, environmental and cultural impacts of the
9 regulated facilities in their communities; and

10 (3) decisions are made about whether to fund
11 or grant permits for the regulated facilities by the energy,
12 minerals and natural resources department, the department of
13 environment or local governments pursuant to their zoning
14 authority without sufficient consideration of the public
15 health, environmental and cultural impacts of the regulated
16 facilities on ethnic, income-level and racial populations in
17 the communities that are or will be affected significantly by
18 the regulated facilities.

19 B. The purposes of the New Mexico Healthy
20 Communities Act are to:

21 (1) require that the energy, minerals and
22 natural resources department, the department of environment and
23 local governments, when using their zoning authority, consider
24 the impacts of their decisions on communities affected by those
25 decisions;

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1 (2) prevent decisions of the energy, minerals
2 and natural resources department and the department of
3 environment and zoning decisions of local governments from
4 having disproportionate public health, environmental and
5 cultural impacts on members of ethnic, income-level and racial
6 populations;

7 (3) prevent the concentration in communities
8 of regulated facilities that impact the public health,
9 environment and culture of residents of those communities;

10 (4) provide for enhanced public participation
11 in the decision-making processes of the energy, minerals and
12 natural resources department, the department of environment and
13 local government zoning authorities that affect the public
14 health, environment and culture of communities; and

15 (5) provide affected individuals and
16 communities with a means to address decisions of the energy,
17 minerals and natural resources department and the department of
18 environment and zoning decisions of local governments that
19 violate the terms of the New Mexico Healthy Communities Act.

20 Section 3. DEFINITIONS.--As used in the New Mexico
21 Healthy Communities Act:

22 A. "affected community" means an area of human
23 habitation that:

24 (1) is contiguous to an existing or proposed
25 regulated facility; or

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1 (2) will or may be affected significantly by
2 an existing or proposed regulated facility;

3 B. "chief administrative officer" means the
4 secretary of energy, minerals and natural resources, the
5 secretary of environment or the chief administrative officer of
6 the municipal or county zoning authority;

7 C. "decision concerning a regulated facility"
8 means a determination by a permitting agency related to an
9 existing or proposed regulated facility to:

10 (1) certify compliance with any applicable
11 state or United States statute or rule;

12 (2) issue, renew, amend or deny any permit;

13 (3) issue, renew or amend any permit with
14 terms or conditions;

15 (4) issue, renew, amend or deny any variance
16 or waiver;

17 (5) issue, renew or amend any variance or
18 waiver with terms or conditions; or

19 (6) provide funding for the facility;

20 D. "impact" means a present or future significant
21 effect on the public health, environment or culture of
22 residents of an affected community;

23 E. "permitting agency" means the energy, minerals
24 and natural resources department, the department of environment
25 or any bureau, department, division, subdivision, other entity

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1 or any employee or agent of any of those departments.

2 "Permitting agency" also includes any municipality or county,
3 or an agency, employee, agent or elected official of any
4 municipality or county, when exercising zoning authority;

5 F. "proceeding" means any administrative or other
6 process that could result in a decision concerning a regulated
7 facility; and

8 G. "regulated facility" means an entity or
9 operation, whether privately or publicly owned and operated,
10 that:

11 (1) may be constructed or operated only
12 pursuant to a decision concerning a regulated facility by a
13 permitting agency;

14 (2) is governed by a permit or other
15 authorization issued by a permitting agency; or

16 (3) is or will be funded in whole or in part
17 by funds dispensed, generated or provided by or through a
18 permitting agency.

19 Section 4. PUBLIC NOTICE REQUIREMENTS.--If the chief
20 administrative officer determines that a decision concerning a
21 regulated facility may have an impact on an affected community,
22 the permitting agency shall cause notice of the proceeding to
23 be given to residents of each affected community. The notice
24 shall be given at the time that the application or other
25 request for the decision is filed, and shall be given in at

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1 least the following manner:

2 A. actual written notice of the application and the
3 proceeding shall be given to the owners of record of properties
4 that are adjacent to the property on which the regulated
5 facility is or is proposed to be located;

6 B. notice of the application and the proceeding,
7 including any public hearing or opportunity for a public
8 hearing and the manner in which a hearing may be requested,
9 shall be published in a newspaper of general circulation in
10 each affected community;

11 C. notice of the application and the proceeding,
12 including any public hearing or opportunity for a public
13 hearing and the manner in which a hearing may be requested,
14 shall be posted in a conspicuous place on the property of the
15 regulated facility and in one or more conspicuous places in the
16 community;

17 D. notice of the application and the proceeding,
18 including any public hearing or opportunity for a public
19 hearing and the manner in which a hearing may be requested,
20 shall be sent by first class mail to all persons who have
21 requested notice of applications, hearings, opportunities for
22 hearings or other proceedings concerning the facility or type
23 of facility that is the subject of the application, hearing,
24 opportunity for hearing or other proceeding;

25 E. notice of the application and the proceeding,

. 154835. 3

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1 including any public hearing or opportunity for a public
2 hearing and the manner in which a hearing may be requested,
3 shall be provided as early as possible on the web site of the
4 permitting agency to whom the application is directed;

5 F. the written and published notice provided for in
6 Subsections A through E of this section shall also be provided
7 to residents of each affected community in at least one other
8 medium, including radio, television or a newsletter distributed
9 within the community, in a manner designed to reach the maximum
10 number of members of each community;

11 G. the written and published notice provided for in
12 Subsections A through E of this section shall:

13 (1) be in English and any other written
14 language most appropriate to the affected communities;

15 (2) include a description of the existing or
16 proposed regulated facility, and of the application or other
17 request for the decision; and

18 (3) include a statement indicating whether a
19 public hearing will be held or the procedure that should be
20 followed to request a public hearing; and

21 H. the notice to be published shall also be
22 published in a place in the newspaper calculated to give
23 members of the public the most effective notice.

24 Section 5. COMMUNITY IMPACT REPORT REQUIRED. -- Prior to
25 any decision concerning a regulated facility for which notice

. 154835. 3

1 is given pursuant to Section 4 of the New Mexico Healthy
2 Communities Act, the permitting agency shall cause a community
3 impact report to be prepared. To the maximum extent possible,
4 the community impact report shall be written in plain language
5 that can be understood by the residents of an affected
6 community. The community impact report also shall be published
7 both in English and in any other written language most
8 appropriate to each affected community in which the regulated
9 facility is or is proposed to be located. At a minimum, the
10 community impact report shall include the following:

11 A. the demographic makeup of each affected
12 community, including the most recent United States census data
13 showing the ethnic, income-level and racial populations in that
14 community;

15 B. the present and future impacts that the existing
16 or proposed regulated facility will or may have on the public
17 health, environment or culture of each affected community;

18 C. the other known existing and proposed facilities
19 that have or will have an impact on the public health,
20 environment or culture of each affected community; and

21 D. any other known environmental factors that have
22 or will have an impact on the public health, environment or
23 culture of each affected community.

24 Section 6. PROHIBITED ACTS. --A permitting agency shall
25 not make any decision concerning a regulated facility if that

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1 decision would:

2 A. result in a disproportionate public health,
3 environmental or cultural impact or risk being imposed on the
4 members of any ethnic, income-level or racial population of an
5 affected community; or

6 B. result in a concentration of regulated
7 facilities in an affected community.

8 Section 7. CITIZEN ENFORCEMENT. --

9 A. A person having an interest that is or may be
10 adversely affected by a violation of the New Mexico Healthy
11 Communities Act or a rule, order or permit issued pursuant to
12 that act may commence a civil action on the person's own behalf
13 against any permitting agency to compel compliance with that
14 act.

15 B. No action shall be commenced pursuant to this
16 section prior to sixty days after the plaintiff has given
17 written notice to the permitting agency alleged to have
18 violated the New Mexico Healthy Communities Act and to the
19 attorney general; provided, however, that when the violation
20 complained of constitutes an immediate threat to the health or
21 safety of the plaintiff or would immediately and irreversibly
22 impair a legal interest of the plaintiff, an action pursuant to
23 this section may be brought immediately after notification to
24 the proper parties.

25 C. Suits brought pursuant to this section against

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1 permitting agencies or officials of New Mexico state government
2 shall be brought in the district court for Santa Fe county.
3 Suits brought pursuant to this section against agencies or
4 officials of municipalities or counties shall be brought in the
5 district court for any county that includes, in whole or in
6 part, an affected community.

7 D. The court, in issuing a final order in an action
8 brought pursuant to this section, may award costs of
9 litigation, including attorney and expert witness fees, to a
10 party whenever the court determines that such an award is
11 appropriate.

12 E. The action and remedies provided for in this
13 section are cumulative and in addition to any other remedies
14 available.

15 Section 8. OTHER REGULATORY REQUIREMENTS. --The provisions
16 of the New Mexico Healthy Communities Act are in addition to
17 all other regulatory requirements for locating and operating a
18 regulated facility. Compliance with other regulatory
19 requirements shall not be deemed to be compliance with any
20 provisions of the New Mexico Healthy Communities Act, and
21 compliance with the New Mexico Healthy Communities Act shall
22 not be deemed to be compliance with any regulatory requirement
23 otherwise provided by law.

24 Section 9. CONTRARY DECISIONS VOID. --Any decision
25 concerning a regulated facility that is made after July 1, 2005

. 154835. 3

1 and any permit, variance or other authorization resulting from
2 the decision are void if the decision is not made in
3 substantial compliance with the provisions of the New Mexico
4 Healthy Communities Act.

5 Section 10. RULES. --A permitting agency shall promulgate
6 such rules as are necessary to ensure compliance with the
7 provisions of the New Mexico Healthy Communities Act.

8 Section 11. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2005.

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